

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JOE DAVENPORT,

Appellant,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

Case No. DEMO-02-0003

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 Hearing. This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and RENÉ EWING, Member. The hearing was held on September 12, 2002, in the South Campus Center at the University of Washington in Seattle, Washington.

1.2 Appearances. Appellant Joe Davenport was present and was represented by Joaquin M. Hernandez, Attorney at Law of Parr and Younglove, P.L.L.C. Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 Nature of Appeal. This is an appeal from a disciplinary sanction of demotion for gross misconduct, neglect of duty and incompetence. Respondent alleged that Appellant had three accidents while driving a university-owned vehicle to make deliveries on the campus and that he failed to report the first accident.

1.4 Citations Discussed. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Plaisance v.

1 Dep't of Social and Health Services, PAB No. D86-75 (Kent, Hrg. Exam.); Rainwater v. School for
2 the Deaf, PAB No. D89-004 (1989); Cantrell v. Dep't of Social and Health Services, PAB No.
3 DISM-01-0055 (2001).

5 **II. FINDINGS OF FACT**

6 2.1 Appellant Joe Davenport is a Food Service Worker and a permanent employee of
7 Respondent University of Washington (UW) in the Department of Housing and Food Services' Boss
8 Tucker Unit. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the
9 rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the
10 Personnel Appeals Board on February 12, 2002.

11
12 2.2 By letter dated January 31, 2002, Respondent notified Appellant of his demotion from Truck
13 Driver 1 to Food Service Worker, effective February 19, 2002. Respondent charged Appellant with
14 neglect of duty and/or gross misconduct and/or incompetence. In summary, Respondent alleged
15 that between September 17, 2001, and October 17, 2001, Appellant had three accidents while
16 making deliveries in a University-owned truck and he failed to report the first accident.

17
18 2.3 Appellant began employment with Respondent in September 1988. Appellant is a licensed
19 driver. At the time of the incidents giving rise to this appeal, Appellant had been driving trucks for
20 Respondent for approximately two years. Appellant has no history of prior disciplinary actions for
21 driving incompetence. Appellant was aware of the requirements of the University's policy
22 regarding reporting vehicle accidents.

23
24 *Accident One:*

1 2.4 On September 17, 2001, Appellant was driving a University-owned delivery truck. At
2 approximately 7:50 a.m., Appellant completed a delivery to the Burke Museum. As he was turning
3 the truck out of the parking lot at the museum, the mirror of the truck scraped against a construction
4 fence. Appellant overcorrected the truck away from the fence and, in doing so, caught the fence
5 with the back of the truck. As Appellant proceeded forward, the truck pulled the fence. As a result,
6 several sections of the fence were pulled down and damaged. Appellant stopped the truck, backed
7 up, unhooked the fence from the truck and proceeded to complete his other deliveries. There were
8 no pedestrians in the area when this accident occurred. However, contract construction employees
9 who were in the construction area observed the accident. Although Appellant had a cell phone in
10 the truck, he did not report the accident. Furthermore, after he completed his delivery route and
11 returned to the Boss Tucker work unit, he did not report the accident.

12
13 2.5 The following day, Appellant's supervisor, Jennifer Boissoneau, learned that the truck
14 Appellant had been driving was involved in a hit and run accident with the fence at the construction
15 site next to Burke Museum. Appellant admitted that he had been in the accident and that he had
16 forgotten to report it. Appellant completed a vehicle accident report form on September 19, 2001.
17 This accident resulted in no damage to the truck. However, the construction company billed the
18 University for \$789 in damage to the fence.

19
20 *Accident Two:*

21 2.6 On September 20, 2001, Appellant was driving the same University-owned delivery truck.
22 At approximately 9:40 a.m., Appellant completed a delivery to By George Café. The delivery area
23 for By George Café is located in a parking garage that is accessible and utilized by staff, students
24 and the public.

1 2.7 After completing the delivery, Appellant got in the truck and proceeded to leave the loading
2 dock when he realized he had forgotten to raise the lift gate on the truck. Appellant turned the truck
3 engine off, left the key in the ignition and the truck in gear, and got out the truck. Appellant did not
4 set the hand brake on the truck. Appellant went to the back of the truck and raised and secured the
5 lift gate. The force of securing the lift gate caused the truck to roll forward down the loading dock
6 ramp. Appellant bolted to the truck and leaped into the cab. However, before Appellant could stop
7 the truck, it rolled across the parking area and hit a dumpster. There were no pedestrians in the area
8 when this accident occurred. However, because the loading dock is located in a parking garage, it
9 is not uncommon for pedestrians and/or vehicles to be in the area.

10
11 2.8 After Appellant returned to the Boss Tucker work unit, he completed an accident report
12 form. This accident resulted in damage to the front bumper of the truck. However, the University
13 did not have the bumper repaired.

14
15 *Accident Three:*

16 2.9 On October 17, 2001, Appellant was once again driving the same University-owned delivery
17 truck. At approximately 12:45 p.m., Appellant completed a delivery to Balmer Hall.

18
19 2.10 The delivery area at Balmer Hall is located in a busy area of campus. There were
20 pedestrians walking in the area and vehicles parked along the sides of the delivery area. In addition,
21 vehicles and motorcycles were parked on the street at the entry to the delivery area.

22
23 2.11 Because the area was congested, Appellant drove the truck head-first into the delivery area,
24 rather than back it in. By driving in headfirst, Appellant had a clear view in front of him, but his
25 view was obscured when he backed out. While backing out, Appellant relied on the truck's mirrors

1 to see if any obstacles were in his way. Appellant knew, however, that a row of motorcycles was
2 parked on the street near the entry to the delivery area. There were a number of pedestrians and an
3 independent tow trucker driver in the area. As Appellant backed up, it was obvious to the
4 pedestrians and the tow trucker driver that Appellant was going to hit the motorcycles. At least one
5 of the pedestrians yelled and the tow truck driver blew the horn on his truck to get Appellant's
6 attention. However, Appellant continued to back up and he struck the first motorcycle in the row.
7 The motorcycle fell over hitting the motorcycle next to it. The domino effect continued until a total
8 of four motorcycles were knocked over.

9
10 2.12 This accident resulted in no damage to the truck Appellant was driving. However, the
11 motorcycles received approximately \$10,000 in damage. In addition, the University paid
12 approximately \$8,000 to the owners of the motorcycles for inconvenience and alternate
13 transportation while the motorcycles were being repaired.

14
15 2.13 By memorandum dated January 7, 2002, Appellant's supervisor, Jennifer Boisoneau,
16 recommended to Paul Brown, Director of Housing and Food Services, that Appellant be demoted.
17 Ms. Boisoneau determined that Appellant failed to maintain proper control of the truck and his
18 actions put the safety of staff, students and the public at risk. Ms. Boisoneau recommended that
19 Appellant be demoted to Food Service Worker position.

20
21 2.14 Mr. Brown concurred with Ms. Boisoneau's recommendation. By letter dated January 31,
22 2002, Mr. Brown notified Appellant of his demotion.

23
24 2.15 University policies require an employee who is in an accident while driving a state-owned
25 vehicle to report the accident to his/her supervisor or manager immediately and to report the

1 accident the University police within 24 hours of the accident. In addition, University policies
2 require vehicle accident report forms to be completed, and when damage exceeds \$500, motor
3 vehicle collision reports to be completed.

4 5 **III. ARGUMENTS OF THE PARTIES**

6 3.1 Respondent contends that Appellant exhibited senseless carelessness in each of the accidents
7 and that by doing so he placed the safety of staff, students and members of the public at risk.
8 Respondent argues that Appellant engaged in a hit and run accident with the construction fence, that
9 he failed to report the accident as required by policy, that he used poor judgment and that he failed
10 to operate the truck in a safe manner. Respondent contends that regardless of whether Appellant
11 was familiar with the specific University policy addressing accident reports, Appellant knew he was
12 to immediately report damage to property. Respondent further contends that an employee does not
13 need to be trained to know that it is not acceptable to hit objects with a truck, or to leave the scene
14 of an accident, or to leave a vehicle in gear without setting the parking brake. Respondent asserts
15 that Appellant was not competent to operate a state-owned vehicle on a campus. Respondent argues
16 that given the seriousness of Appellant's actions, demotion is a lenient disciplinary sanction.

17
18 3.2 Appellant acknowledges that he was responsible for the three accidents and admits that he
19 forgot to report the first accident until his supervisor reminded him of the accident. Appellant
20 argues that Respondent did not offer him safety training or explain the accident reporting policies to
21 him. Appellant contends that Respondent created a chaotic atmosphere of undue stress and pressure
22 and unrealistic time constraints for deliveries. Appellant asserts that he is willing to accept
23 responsibility for his actions but contends that a permanent demotion is too severe in light of
24 Respondent's failure to provide him the guidance and training he needed to be successful at his job.

25 / / / / /

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Incompetence presumes a lack of ability, capacity, means, or qualification to perform a given duty. Plaisance v. Dep't of Social and Health Services, PAB No. D86-75 (Kent, Hrg. Exam.), aff'd by Board (1987).

4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's interest or standards of expected behavior. Cantrell v. Dep't of Social and Health Services, PAB No. DISM-01-0055 (2001).

1 4.6 Respondent has met its burden of proof that Appellant neglected his duty to drive in a safe,
2 responsible manner and to immediately report the first accident to his supervisor. Appellant was an
3 experienced, licensed driver. Licensed drivers are expected to use common sense when driving. In
4 each of these incidents, Appellant failed to use common sense and failed to follow basic safe
5 driving practices. While Appellant's actions while driving were not deliberate nor intentional, his
6 repeated failure to utilize common sense, to exercise good judgment and to demonstrate safe-
7 driving techniques raises serious concerns about safety for the campus population and liability for
8 the University.

9
10 4.7 Respondent has met its burden of proof that Appellant demonstrated incompetence as a
11 truck driver particularly when he left the truck in gear and failed to set the parking brake.

12
13 4.8 Respondent has met its burden of proof that Appellant's actions rose to the level of gross
14 misconduct. Appellant was aware of his duty to immediately report accidents to his supervisor or
15 manager. Appellant had a cell phone in the cab of the truck, but he willfully chose not to use it to
16 report the accident. Appellant disregarded the University's standards of expected behavior.

17
18 4.9 In determining whether a sanction imposed is appropriate, consideration must be given to
19 the facts and circumstances including the seriousness and circumstances of the offense. The penalty
20 should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent
21 recurrence, to deter others from similar misconduct, and to maintain the integrity of the program.
22 An action does not necessarily fail if one charge is not sustained unless the entire action depends on
23 the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

1 4.10 Respondent has established that Appellant was not able to safely perform the duties and
2 responsibilities of a truck driver. However, Respondent has failed to establish that demotion to a
3 Food Service Worker was the level of sanction necessary to prevent recurrence or similar
4 misconduct. Prior to being promoted to a Truck Driver 1, Appellant was a Food Service Worker
5 Lead. The Food Service Worker Lead classification does not require incumbents to drive.
6 Therefore, under proven facts and circumstances of this case, we conclude that the appropriate
7 sanction is demotion to a Food Service Worker Lead position.

8
9 **V. ORDER**

10 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Joe Davenport is granted in
11 part. The sanction of demotion to the classification of Food Service Worker is modified to a
12 demotion to the classification of Food Service Worker Lead.

13 DATED this _____ day of _____, 2002.

14 WASHINGTON STATE PERSONNEL APPEALS BOARD

15
16 _____
17 Walter T. Hubbard, Chair

18
19 _____
20 Gerald L. Morgen, Vice Chair

21 _____
22 René Ewing, Member

23
24
25
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